

**REMARKS**

Claims 1-23 are pending in the application. Claims 7, 8 and 14 have been amended, claims 10 and 19 have been canceled and claim 1-6, 11-13 and 20-23 have been withdrawn by way of the present amendment. Reconsideration is respectfully requested.

In the outstanding Office Action, the title of the invention was indicated as not being descriptive; the specification was objected to due to including a copyright notice that did not comply with 37 CFR Section 1.71(d) and 1.71(e); claims 7-10, 14-16 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-20, 23 and 24 of copending US Patent Application No. 11/111,757; claims 7, 10 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 and 18 of copending U.S. Patent application No. 11/111,781; claims 7, 10, 14-16 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-20, 23 and 24 of copending U.S. Patent application No. 11/259,634; claims 7-10, 14-16 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 101-103, 106 and 107 of copending U.S. Patent application No. 11/259,885; claims 10 and 19 were rejected under 35 U.S.C. Section 112, 2<sup>nd</sup> paragraph, as being indefinite; claims 8 and 9 were rejected under 35 U.S.C. Section 112, 2<sup>nd</sup> paragraph, due to being indefinite; claims 7 and 8 were rejected under 35 U.S.C. Section 102(e) as being anticipated by US Patent No. 6,769,903 (Morshed et al.); claims 10, 14, 15 and 19 were rejected under 35 U.S.C. Section 102(b) as being anticipated by US Patent No. 5,802,585 (Scales et al.); claim 9 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Morshed et al. in view of Scales et al.; claim 16 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Scales et al., as applied to claim 14 above and further in view of Morshed et al.; and claims 17 and 18 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Scales et al., as applied to claim 14 above, and further in view of US Patent Application Publication US 2004/0163077 Dimpsey et al.

### ***Specification***

The title of the invention was indicated as not being descriptive. The title of the invention has been amended as suggested in the outstanding Office Action. Therefore, it is respectfully requested that the issue of the title not being descriptive is moot and should be withdrawn.

The specification was objected to due to including a copyright notice that did not comply with 37 CFR Section 1.71(d) and 1.71(e). The specification has been amended so that the copyright notice complies with 37 CFR Section 1.71(d) and 1.71(e). Therefore, it is respectfully requested that the objection to the copyright notice is moot and should be withdrawn.

### ***Double Patenting Rejections***

Claims 7-10, 14-16 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-20, 23 and 24 of copending US Patent Application No. 11/111,757.

Claims 7, 10 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 and 18 of copending U.S. Patent application No. 11/111,781.

Claims 7, 10, 14-16 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-20, 23 and 24 of copending U.S. Patent application No. 11/259,634.

Claims 7-10, 14-16 and 19 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 101-103, 106 and 107 of copending U.S. Patent application No. 11/259,885.

Withdrawal of the above-discussed provisional rejections under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of the above-referenced patent applications is respectfully requested.

As noted in the outstanding Office Action, a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) or 1.321(d) may be used to overcome the above-discussed provisional obviousness-type double patenting rejections provided the conflicting application or patent is shown to be commonly owned with the present application. (See 37 C.F.R. 1.130(b)).

The MPEP indicates a terminal disclaimer may be submitted when two co-pending applications have the double patenting rejection and when at least one of the above-referenced applications has been issued. A discussion follows indicating common ownership has been confirmed for when the terminal disclaimer is submitted.

#### **-Statement of Common Ownership**

As noted in the outstanding Office Action, the above-discussed rejection can be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an assignment to the same person. (See 35 U.S.C. 103(c) and MPEP 706.02(1)(1) and 706.02(1)(2)).

The present application (i.e., U.S. Patent Application No. 10/830,042) and the above-referenced applications (i.e., U.S. Patent Application Nos. 11/111,757, 11/111,778, 11/111,779, 11/111,781 and 11/111,946) were, at the time the invention was made and currently, commonly owned by the same party, Waratek PTY Limited. Assignments of these applications to Waratek PTY Limited have been recorded in the U.S. Patent & Trademark Office for the present application at Reel/Frame: 014994/0105; and for the additionally referenced applications at Reel/Frame: 016608/0543, 016608/0629, 016608/0494, 016608/0526 and 016608/0533, respectively. Copies of the Patent assignment Abstract page from the USPTO website are also attached to document the above-discussed information.

Therefore, it is respectfully submitted that in view of the attached terminal disclaimer and the common ownership, the multiple double patenting rejections of the present application have been overcome and should be withdrawn.

### ***35 USC Section 112 Rejections***

Claims 8, 9, 10 and 19 were rejected under 35 U.S.C. Section 112, 2<sup>nd</sup> paragraph, as being indefinite. Applicant respectfully traverses the rejection.

Claims 10 and 19 were indicated as being omnibus claims and have been canceled by way of the present amendment. Claim 8 has been amended to clarify the invention. In particular, claim 8 has been amended to depend on claim 7 and to provide proper antecedent basis as follows:

[t]he method as claimed in claim ~~10~~ 7 wherein the  
~~modification of step of modifying the application program is~~  
different for different computers.

The amendment is in accordance with the Examiner's interpretation of the claims and support for the amendment is provided by the original claims and specification. Therefore, it is respectfully submitted that the amendment raises no question of new matter and that claims 8 and 9 are now definite.

### ***35 USC Section 102 Rejections***

Claims 7 and 8 were rejected under 35 U.S.C. Section 102(e) as being anticipated Morshed et al. Applicant respectfully traverses the rejection.

Claim 7 has been amended to clarify the invention. In particular, claim 7 has been amended to recite:

[a] method of loading an application program *processing a corresponding portion of the application program on one of a plurality of computers*, the plurality of computers being

interconnectable via a communications link, and different portions of said application program being substantially *simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an independent local memory accessible only by the corresponding portion of the application program* (emphasis added).

Support for the amendment is provided at least at page 3, line 22 to page 4, line 2. Therefore, the amendment raises no question of new matter.

Morshed et al. discloses a coordinated application monitoring in a *distributed computing environment* (emphasis added).<sup>1</sup> In particular, Morshed et al. discloses that execution control is intercepted at a first communication point between a calling function and a called function for a cross execution context call.<sup>2</sup> Further, Morshed et al. discloses the calling function is associated with a first execution context and the called function is associated with a second execution context.<sup>3</sup>

That is, Morshed et al. discloses an instrumentation method applicable to a distributed computing application environment for the purpose of intercepting cross-context calls between two machines. Instrumentation methods, as disclosed by Morshed et al., modify executable application code in order to insert additional instructions or operations which have functions unrelated to the actual application code. Cross-context calls are functional procedures called by the application code on a first machine but intercepted and sent to a second machine for execution. In particular, Morshed et al. discloses *the second machine executes the functional procedure instead of the first machine* and the result is returned to the first machine when the second machine completes the task (emphasis added).

However, Morshed et al. nowhere discloses as claim 7 recites:

*processing a corresponding portion of the application program on one of a plurality of computers, the plurality of computers being interconnectable via a communications link, and different portions of said application program being substantially simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an*

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<sup>1</sup> Morshed et al. at Title and ABSTRACT.

<sup>2</sup> *Id.* at column 2, lines 1-3.

<sup>3</sup> *Id.* at column 2, lines 4-6.

*independent local memory accessible only by the corresponding portion of the application program* (emphasis added).

That is, in contrast to the claimed invention, Morshed et al. discloses a distributed application program. More specifically, Morshed et al. discloses a “distributed application” written to operate *on two or more machines*. Furthermore, because the execution carried out by the second machine is on behalf of the first machine, Morshed et al. discloses what can be considered “a master/slave relationship” between the two machines.

In contrast to Morshed et al., in the claimed invention different portions of the application program are, as recited in claim 7: “substantially simultaneously executable on one of a plurality of computers,”. That is, in the claimed invention “processing a corresponding portion of the application program on one of a plurality of computers,” and “simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an independent local memory accessible only by the corresponding portion of the application program.”

Therefore, it is respectfully submitted that Morshed et al. does not disclose, anticipate or inherently teach the claimed invention and that claim 7, and claims dependent thereon, patentably distinguish thereover.

Claims 10, 14, 15 and 19 were rejected under 35 U.S.C. Section 102(b) as being anticipated by US Patent No. 5,802,585 (Scales et al.). Applicant respectfully traverses the rejection.

Claims 10 and 19 have been canceled by way of the present amendment. Claim 14 has been amended to clarify the invention. In particular, claim 14 has been amended to recite:

*processing a corresponding portion of the application program on one of a plurality of computers, the plurality of computers being interconnectable via a communications link, and different portions of said application program being substantially simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an*

*independent local memory accessible only by the corresponding portion of the application program* (emphasis added).

Support for the amendment is provided at least at page 3, line 22 to page 4, line 2. Therefore, the amendment raises no question of new matter.

Scales et al. discloses relates to a method of optimizing access to remote memory locations of a distributed shared memory (DSM) system. Specifically, Scales et al discloses an instrumentation method of determining multiple remote memory addresses which will be accessed (such as a range of addresses) and then sending a single “batched” request to the remote machine with the desired range of memory locations instead of sending multiple single requests for single memory locations.

In addition, Scales et al. disclose a distributed shared memory (DSM) computer, its application program is the partitioned program referred to in the prior art of Fig. 3 of the present specification. Further, in the arrangements described in the present specification, there is no “requesting” of remote memory locations such as is required for DSM systems.

However, Scales et al. nowhere discloses as claim 14 recites:

*processing a corresponding portion of the application program on one of a plurality of computers, the plurality of computers being interconnectable via a communications link, and different portions of said application program being substantially simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an independent local memory accessible only by the corresponding portion of the application program* (emphasis added).

That is, in contrast to the claimed invention, Scales et al. discloses a distributed application program. More specifically, Scales et al. discloses a “distributed application” written to operate *on two or more machines*. In contrast to Scales et al., in the claimed invention different portions of the application program are substantially simultaneously executed on different computers. That is, the claimed invention “processing a corresponding portion of the application program on one of a plurality of computers,” and “simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an independent local memory accessible only by the corresponding portion of the application program.” Therefore, it is

respectfully submitted that Scales et al. does not disclose, anticipate or inherently teach the claimed invention and that claim 14 and claims dependent thereon, patentably distinguish thereover.

### ***35 USC 103 Rejections***

Claim 9 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Morshed et al. in view of Scales et al. and claim 16 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Scales et al., as applied to claim 14 above and further in view of Morshed et al. However, claims 9 and 16 have been canceled by way of the present amendment and thus, the rejection is moot.

Claims 17 and 18 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Scales et al., as applied to claim 14 above, and further in view of Dimpsey et al. Applicant respectfully traverses the rejection.

Claims 17 and 18 are ultimately dependent upon claim 14. As discussed above, Scales et al. does not disclose the limitations of claim 14. Thus, at least for the reasons discussed above, Scales et al. also does not disclose the limitations of claims 17 and 18.

In an attempt to overcome the deficiencies of Scales et al., the outstanding Office Action attempts to combine Dimpsey et al. with Scales et al. However, Dimpsey et al. cannot overcome all of the deficiencies of Scales et al., as will be discussed below.

Dimpsey et al. is another example of instrumentation used in order to collect execution information such as execution statistics. In particular, Dimpsey et al. appears to have been cited merely to indicate that just-in-time compilation is in the background art. However, Dimpsey et al. nowhere discloses as claim 14, claim 17 and claim 18 recite:

*processing a corresponding portion of the application program on one of a plurality of computers, the plurality of computers being interconnectable via a communications link, and different portions of said application program being substantially simultaneously executable on each one of the plurality of computers with each one of the plurality of computers having an*



*independent local memory accessible only by the corresponding portion of the application program* (emphasis added).

That is, in contrast to the claimed invention, Dimpsey et al. discloses an instrumentation method with a distributed application program. Thus, Dimpsey et al. cannot overcome the same deficiencies that Scales et al. has as discussed above.

In addition, Dimpsey et al. deals with application programs which has been partitioned to operate on multiple machines and thus constitutes the prior art referred to in Fig. 3 of the specification. As discussed above, the claimed invention is not concerned with such distributed systems and instead operates with an application program written to operate on only a single computer. In view of this disparity between the cited prior art and the claimed invention, it is respectfully submitted that an objection of obviousness is not sustainable. Therefore, it is respectfully submitted that neither Scales et al. nor Dimpsey et al., whether taken individually or in combination disclose, suggest or make obvious the claimed invention. Therefore, claims 17 and 18 and claims dependent thereon patentably distinguish thereover.

### ***Conclusion***

Based on the above amendments and arguments, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that a telephone interview can further advance the application, please feel free to contact applicant's representative below at 202-572-0332 or at [mwyche@cblh.com](mailto:mwyche@cblh.com).

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22216-00003-US1 from which the undersigned is authorized to draw.

Dated: May 25, 2007

Respectfully submitted,

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